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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5

DATE: FEB 17 2012 OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

7 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner filed a motion to reopen and reconsider the director's decision. The director dismissed the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed a Form I-140 petition on August 3, 2009, seeking to classify himself as a member of the professions holding an advanced degree under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). That classification normally requires a job offer and labor certification from a United States employer, but allows for an exemption from the job offer requirement in the national interest. A precedent decision, *Matter of New York State Dept. of Transportation (NYSDOT)*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), includes guidelines for the national interest waiver of the job offer requirement.

The petitioner seeks employment as an attorney. The petitioner asserted that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on March 11, 2010, based on the finding that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The petitioner filed Form I-290B, Notice of Appeal or Motion, on April 2, 2010, as a motion to reopen and to reconsider the decision.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On July 7, 2010, the director dismissed the petitioner's motion. The director quoted the above regulations and stated that the motion did not meet the applicable requirements.

The petitioner appealed the director's decision on August 6, 2010. On appeal, the petitioner submits several exhibits and makes the following assertions:

The constitutional right of being a self-employed lawyer is deprived from the petitioner.

...

Nothing in the precedent decision (*Matter of New York State Dept. of Transportation*) was against a beneficiary being self-employed. . . . The said precedent decision

specifically requires adjudicating officers to give due consideration in such appropriate cases. . . .

The Director, Texas Service Center, ignored the petitioner and beneficiary's special and unique situation and the Service's own policies. . . .

The Director, Texas Service Center, ignored the conventional standard of proof – "preponderance of the evidence." . . .

On the one hand, the Director acknowledges that the labor certification process is inapplicable and unavailable in this case. . . . On the other hand, the Director keeps on insisting that all the unique skills and attributes the petitioner and beneficiary demonstrates should be articulated in an application for labor certification.

The appeal under consideration by the AAO is not an appeal of the director's initial decision on the merits of the petition. The petitioner did not appeal that decision, but chose to file a motion instead. The director, in turn, dismissed that motion. On appeal, therefore, is not the denial of the petition but rather the dismissal of the motion. Before the AAO can give any consideration to the merits of the underlying petition, the petitioner must first establish that the director erred by dismissing the motion.

The director's dismissal notice quoted extensively from the regulations at 8 C.F.R. § 103.5(a), including the requirements of motions to reopen and to reconsider. The director's July 7, 2010 decision included a brief discussion of the *NYS DOT* precedent decision, but the director did not reopen the petition and then re-deney it on the merits. Rather, the director dismissed the motion for failure to meet the requirements of a motion. On appeal, the petitioner does not even address, much less rebut, the director's finding that the motion failed to meet applicable requirements. Instead, the petitioner offers multiple assertions to the effect that the director should have approved the petition in the first place.

The petitioner cannot overcome the dismissal of his motion by filing a new appeal that seeks readjudication of the underlying petition, as though the motion and its dismissal never happened. The petitioner's opportunity to dispute the original decision was the 30-day period immediately following the service of that decision. *See* 8 C.F.R. §§ 103.3(a)(2)(i) and 103.5(a)(1)(i). During that period, the petitioner chose to file a motion instead of an appeal, and his April 2010 filing was therefore subject to the requirements of a motion under the regulations quoted previously. The dismissal of the motion did not reset the clock for the petitioner to appeal the original decision. When the petitioner filed his appeal in August 2010, he could only properly appeal the director's dismissal notice of July 2010, not the denial notice of March 2010.

Issues not briefed on appeal by a pro se litigant are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir.2008) (per curiam). When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005). In this instance, the petitioner, on appeal, did not contest or address the director's finding that the filing failed to meet the requirements of a motion. The petitioner has, therefore, abandoned that issue.

The AAO cannot consider the merits of the underlying appeal unless the petitioner first establishes that the director improperly dismissed the motion. The petitioner failed to do so, and therefore the AAO will not rule on the merits of the director's first denial notice or on the petition itself.

The petitioner has failed to demonstrate, or even to allege, that the director erred by dismissing the petitioner's earlier motion to reopen and reconsider. The AAO will therefore dismiss the appeal.

ORDER: The appeal is dismissed.